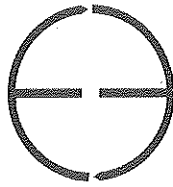


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# California Council for Environmental and Economic Balance

100 Spear Street, Suite 805, San Francisco, CA 94105 • (415) 512-7890 • FAX (415) 512-7897

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June 20, 2008

Ms. Mary Nichols, Chair  
CA Air Resources Board  
1001 'I' Street  
Sacramento, CA 95814

## RE: Scoping Plan Criteria

Dear Mary:

As a follow-up to our November 7, 2007 letter on the proposed AB 32 Scoping Plan, the California Council for Environmental and Economic Balance (CCEEB) offers these additional comments on the criteria required for an effective Scoping Plan. Many of these items have been the subject of discussions in the Economic Analysis and Program Design workshops as well as the Scoping Plan Workshop Policy Scenarios held earlier this year and we believe that some additional elaboration is warranted.

CCEEB believes that for the AB 32 Scoping Plan to be truly effective it must: 1) meet existing regulatory requirements; 2) achieve maximum technologically feasible and cost-effective reductions; 3) ensure adequate, reliable and affordable energy; 4) minimize cost and maximize total benefits for California's economy; 5) be reasonably implementable; 6) treat the differing emission sources equitably; 7) provide certainty; 8) minimize leakage; 9) encourage improvements and modernization of the energy infrastructure; 10) encourage innovation; 11) maximize consistency with federal, regional and international standards and programs; 12) ensure complementary, non-duplicative regulatory requirements; 13) recognize early actions; 14) demonstrate decisive leadership and 15) provide opportunities for disadvantaged communities.

These criteria are to be found in various sections throughout AB 32. Although many of these criteria have been mentioned by California Air Resources Board (CARB) staff at various workshops, CCEEB does not believe that some have been fully considered. We understand that there is not enough time to revise the draft Scoping Plan document before it's scheduled release next week, but we believe it is still productive to raise these issues at this time so that they can be addressed during the Scoping Plan review period.

## (1) Meet Existing Regulatory Requirements (§ 38562)

AB 32 is clear that existing regulatory requirements must be upheld, a goal which CCEEB strongly supports. However, the act was never meant to address specific, direct regulation of criteria pollutants or air toxics. While CCEEB believes the 30 year history of CARB and the air districts demonstrates unmistakably that clean air laws aimed at protecting the public health are enforced strictly, any alleged deficiencies in existing air regulations are best addressed within those frameworks, and should not be forced to fit

into the context of a global climate change effort. Layering one complex issue on top of another ends up obscuring both and fixing neither. AB 32 was not designed to solve health-based air quality issues, but its clear intent is to implement GHG reduction policy in a way that does not make achievement of clean air goals more difficult.

## **(2) Achieve Maximum Technologically Feasible and Cost-Effective Reductions (§ 38562)**

CARB must adhere to the statutory definition of cost-effectiveness in order to achieve legislative intent of applying the lowest cost means of achieving the statutory goals (Section 38501(h).) Section 38505(d) defines cost-effective or cost-effectiveness to mean “the cost per unit of reduced emissions of greenhouse gases adjusted for its global warming potential.” In other words cost-effective is defined in terms of \$/mt CO<sub>2</sub>e reduced. CARB has an obligation to identify and report the cost per unit of each measure, including each command and control measure and market based measure to be considered in its implementation of AB 32. The choice of the appropriate threshold value of this metric is critical to achieving the cost-minimization, equity and fairness required by AB 32 and the other values of AB 32 implementation cited in the Act to minimize leakage, ensure affordable and reliable energy, and achieve the necessary emission reductions at least cost.

When the term “maximum technologically feasible” is coupled with the defined term “cost effective,” as it is many times in the Global Warming Solutions Act, a test of cost effective as defined in the previous paragraph must be applied to technologies just as it needs to be applied to other types of measures. By implication, AB 32 cannot be technology forcing but must rather focus on existing technologies with known costs. CARB should decide which measures to adopt, including those relating to technologies, based on choosing the least costly for the largest reductions. In any event the cost-effectiveness in terms of \$/mt CO<sub>2</sub>e of various implementation options should be compared and the most effective measures should be implemented first.

AB 32 also requires that in evaluating these criteria that the best available economic and scientific information be utilized and that it be evaluated in term of existing and reasonably projected technological capabilities. Cost effectiveness must be measured in terms of today’s costs and technological advances that are reasonably expected to exist in the near future.

CCEEB is very concerned about CARB staff’s stated intentions to factor in the cost of “co-benefits” into the cost-effectiveness formula for various emission reduction strategies. Co-benefits will necessarily involve factoring a very subjective and potentially large arena of impacts into what should necessarily constitute an objective formulation of dollars per pound of GHG emissions reduced. While the June 3, 2008 workshop on cost-effectiveness did present some documented cost figures for the reductions in ROG<sub>s</sub>, NO<sub>x</sub> and PM<sub>10</sub> (which may or may not be a co-benefit depending on what area of the state in which they occur), many more co-benefits have no such corresponding dollar values. AB 32 is very clear about the definition of cost-effective being the cost per ton of CO<sub>2</sub>e reduced. A modified calculation that includes other benefits distorts the meaning of cost effectiveness as defined in the bill. If CARB has a choice between measures that are very low cost per ton GHG reduced and those that are high cost per ton but are accompanied by desirable co-benefits, CCEEB believes CARB should decide in favor the largest GHG reduction at the least cost. To do otherwise would defeat the essential aim of the Act, namely to address effectively the serious threat of global warming while minimizing the cost of meeting that objective.

### (3) Ensures Adequate, Reliable and Affordable Energy (§ 38593)

In the Scoping Plan, CARB should not create new-set asides or portfolio mandates for the electricity sector for AB 32 purposes. Direct regulations that push program goals to possibly unreachable targets run a-foul of the directive to minimize costs and may place the AB 32 GHG emissions reduction goal in peril. California will already have challenges meeting the 20% RPS and the current energy efficiency goals. Creating new, unreachable goals will increase costs to a level which might incite a backlash against AB 32. In E3's model in the PUC/CEC proceeding, the cost of increasing from 20% RPS to 33% involves reductions that cost hundreds of dollars per ton GHG reduced. Rather than creating infeasible goals through particular program directives, CARB should allow the GHG market to find the most cost effective reductions. The state may choose to increase the amount of renewable power required of electricity providers for any number of policy reasons, but AB 32 requires CARB to select cost minimizing measures to reach 1990 levels of GHG by 2020. If renewables are calculated to be among those cost minimizing approaches, CCEEB would not object.

CARB should not assume that new "command and control" programs and mandates will provide a certain percentage of reduction in GHG. While CARB recently stated that it may be possible for 60% of reductions to come from "programs," this figure is highly uncertain, has never been publicly vetted, and does not account for the fact that cap and trade and energy programs are not mutually exclusive. Caution should be used when citing any absolute abatement potential from any measure. If the cap is set at an artificially low level because of assumptions of what aggressive regulatory mandates will bring in the way of emission reductions and the mandates fail to deliver the forecast reductions, high demand may put extreme upward pressure on prices. Not only will California pay for the expensive mandates that have failed, but consumers will have to pay again as GHG market prices are driven up. It is very risky and expensive for policymakers to assume a high level of reductions through discrete programs or mandates, especially an exact percentage that forms the basis of the overall emissions reduction goals themselves.

For the purpose of GHG reductions, once the cap is put into place, regulatory command and control programs created to reduce GHG emissions are inefficient policies that may increase costs. The only time regulatory programs should be used is when the GHG abatement measure is assuredly low cost, but other market failures (e.g. the owner-tenant problem) exist. An example of a tool that policy makers have that individual entities do not is land use and urban planning. Policy makers can foster the systems that allow for more mass transit and decreased land use. Individual actors in the cap and trade market cannot. Command and control programs should not depend on market transformation assumptions and should be based on currently known technologies, because mandates under such programs offer no choice in how to meet goals.

#### Premature to Adopt a 33% RPS Target

CCEEB agrees with the statement by CPUC staff at the May 2, 2008 CARB workshop on the challenges of achieving a 33% RPS: "Given the implementation challenges associated with the 20% by 2010 target, the 33% goal could be difficult to implement." To date, available economic modeling by the CPUC suggests a 33% RPS target by 2020 is unrealistic as a GHG reduction measure, and it is premature to establish any expanded renewable procurement targets beyond the current 20% by 2010 mandate. As was pointed out in opening comments on E3 modeling issues in the CPUC/CEC proceeding, a number of critical issues must be resolved, and additional feasibility assessments performed prior to increasing the existing 20% RPS target. These issues

and assessments include: (1) adequacy of supply, (2) adequacy and availability of transmission infrastructure, and (3) how to integrate new renewable resources into the grid and manage over-generation. Moreover, AB 32 requires that GHG reduction strategies, including the role of new renewables, be evaluated and considered in light of all other potential strategies, so that the adopted GHG limits and emissions reduction measures “achieve the maximum technologically feasible and cost-effective reductions” in GHG (Health and Safety Code 38562(a).) Without this analytical and cost-benefit modeling, a 33% RPS target in and of itself is not consistent with AB 32. As stated above, program set-asides and new regulatory mandates should only be considered when the GHG abatement measure is low-cost and other market failures exist. A 33% RPS mandate does not pass this test.

#### **(4) Minimize Cost and Maximize Total Benefits for California (§ 38501)**

Economic models show that the utilization of a comprehensive (i.e. economy-wide) cap and trade market mechanism coupled with the use of offsets can greatly reduce costs and maximize the direct and primary benefits of GHG emission reductions. However, restricting the participants and the amount of GHG inventory directly regulated by the market and restricting the use of offsets either in terms of geography or quantity or by category, will greatly reduce the overall effectiveness of the program and work against the Board’s obligation with respect to minimizing cost. For example, high compliance costs that could result in leakage of jobs and production translate into increased economic stress for all Californians. This in turn limits the ability of individuals to protect and improve their health and welfare, such as health care and housing.

CCEEB believes that a well-designed cap-and-trade program has real opportunity to maximize benefits to California. First and foremost, because costs will ultimately be spread across the economy, everyone has a stake in maximum reductions at the least cost. Second, markets tend to be the best mechanism to spur innovation, which can help foster California’s burgeoning “green economy” and create “green jobs” (more below). Third, offsets provide a funding mechanism for a range of GHG-related projects that can generate numerous environmental co-benefits, such as energy efficiency, conservation of forests, water and energy, and renewable energy projects if the cost of GHG reductions from such projects can be kept low. Admittedly, a market does not dictate where these projects occur, but the State can and should play a significant and proactive role assisting communities and small businesses to develop and deploy cost-competitive offset projects without placing arbitrary restrictions on the use of and location of offsets. Similarly, trading encourages stationary sources to reduce emissions beyond compliance levels. In this case, the state as a whole will reap the benefit of additional reductions in co-pollutants that go beyond current regulations.

#### **(5) Reasonable to Implement (§ 38562)**

CARB, with its aggressive stakeholder outreach efforts through staff accessibility and the myriad of workshops being held since the effective date of AB 32, appears to have this goal clearly in focus.

#### **(6) Treat the Differing Emission Sources Equitably (§ 38562)**

All sectors (transportation, manufacturing, refineries, electricity generation and natural gas, cement production, etc.) are expected to contribute to statewide reduction of their fair share of GHG emissions. In order to affect a significant reduction in GHG emissions this effort will cause all sectors of the economy to pay the costs of these reduced emissions. It is clearly incumbent on those responsible to implement AB 32 to interpret “maximum technologically feasible and cost

effective” in a consistent, fair and objective manner against a universally supportable standard dollar value per metric ton of CO<sub>2</sub>e emissions reduced so that costs are minimized and spread equitably across California residents and the California economy as a whole (Section 38562(b)(1).)

AB 32 further states that the relative contribution of each emission source to the total of statewide emissions be considered in assigning out the burden of mandatory emission reductions. (Section 38561(e) This calculation must also take into consideration the potential for adverse impacts on small businesses throughout the state. This is an extremely important lynchpin in the success of the AB 32 program and when the issue has been raised in workshop discussions, the response has been a prospective statement a “We’ll see that it is done in an equitable manner.” Without any reference to a methodology or criteria to be employed, it is not possible to determine the equitable distribution of the burden.

#### **(7) Provide Certainty (§ 38592)**

AB 32 is very clear on what is required and what needs to be accomplished by when, i.e. achieve the 1990 emission level by 2020. The Scoping Plan is meant to be the guidance document that shows us how we’re going to get there. We urge the board to adopt a scoping plan that not only guides the various emitting sectors in California but also has enough specificity to insure that each goal is achievable and desirable.

#### **(8) Minimize Leakage (§ 38562)**

AB 32 can have the unintended consequences of actually increasing emissions by having companies that are adversely impacted by the program transferring their operations out of the state. A sound offset policy and other cost mitigation measures will help keep this leakage to a minimum. For example, consider a California cement producer is capped under AB 32 and is short. That is, this cement producer must reduce its emissions under the California scheme to meet its obligations. Without the use of offsets, the reduction forced on the California cement company may result in it’s becoming uncompetitive. Why? Because cement is a global commodity business and much of California's demand is already met by cement from Mexico and Asia that is cheaper than the cement that can be produced locally. This is due to much higher labor and energy costs (a large amount of which result from environmental restrictions on generating fuels, RPS, etc.) The cement company may be forced to shut down or it could decide to move its operations outside California to a neighboring state or overseas where there is no GHG reduction requirement and thus a lower cost of production and higher GHG emissions. Moreover, now the cement, a heavy bulk commodity, has to be transported to the state rather than being produced closer to market resulting in even more GHG emissions. From this example we can see that if making reasonable, low cost offsets available allowed the California cement producer to stay in business, then the classic example of leakage described above would be averted and the overall global GHG would be directionally positive. This result would not occur if the state barred or restricted such offsets. Coupled with the notion that offsets allow developed countries to help developing countries to get experience with efficiency improvements and allow the developed country emitters time to develop new technology that will be very low or zero emitting GHG sources that are ultimately necessary to battle global warming.

AB 32 is truly “landmark” legislation and must be implemented in a way that allows it to tie into future regional, national and international efforts to affect climate change. For that reason actions taken to implement this program need to look beyond California-specific nuances and address issues in a manner that prevents leakage through cost-effective and technologically feasible

implementation requirements as well as through a robust market and offset program that is attractive and functional to entities in California, other states and the nation and designed to be incorporated into national and international programs.

**(9) Encourage Improvement and Modernization of the Energy Infrastructure (§ 38501)**

This will most certainly be accomplished through the operation of a large and effective market mechanism. We are pleased to see that CARB will apparently be recommending a cap & trade program as an essential element in the scoping plan. We would only reiterate that the larger the market the better it will function, and that unrestricted offsets are a critical component of a successful cap & trade program.

**(10) Encourage Innovation (§ 38501)**

According to the ETAAC report, California currently has several hundred million dollars worth of existing incentive fund programs which underwrite research and development activities. None of them currently target GHG emission reductions and they are not coordinated in a manner so as to achieve the maximum amount of co-benefits. Recent legislative initiatives seem to provide funding sources specifically earmarked for the implementation of programs to reduce the energy used by state entities and for the construction of new facilities to enhance the educational opportunities to develop careers related to clean technology, renewable energy and energy efficiency. Additionally, the CPUC has recently created and funded the CA Institute for Climate Solutions which, among other tasks, will coordinate research efforts and encourage innovation and technology development.

**(11) Maximize Consistency with Local, State, Regional, Federal and International Standards and Programs (§ 38564)**

There are a number of emission reduction programs on the regional or international level for the board to review. All have program variations and degrees of success in their attempts to reduce emissions. Whether the subject is acid rain or greenhouse gases, the RECLAIM program in Los Angeles, the EU-ETS system in Western Europe, the Western Climate Initiative or the Regional Greenhouse Gas Initiative of the East Coast, all bear close scrutiny, review and evaluation. While California is, indeed, unique we should be mindful to not tailor a program so specifically to California that it won't harmonize with other state, regional, national and international programs. Criteria and protocols for GHG emission offsets, inventories, reporting, early and voluntary actions, etc. should be designed in such a manner as to guarantee compatibility with other similar programs.

**(12) Ensure Complementary, Non-duplicative Regulatory Requirements (§ 38564)**

While clearly unanticipated at the time of enactment of AB 32, the application of the California Environmental Quality Act (CEQA) has since been raised as an issue in numerous projects and in remedial legislation – and should be addressed by ARB as an element of the Scoping Plan. Even at this early stage in the AB 32 process, affected entities are already attempting to market their emission reductions to assist others in complying with CEQA, many months before ARB develops the full Scoping Plan. Last year the legislature enacted a budget trailer bill mandating that the Governors Office of Planning and Research (OPR) develop guidelines to assist public agencies in the mitigation of GHG emissions or the effects of GHG as required under CEQA. On June 19, 2008, OPR released its "Technical Advisory" entitled "CEQA and Climate Change"

containing draft guidelines which mandate that lead agencies identify, analyze, assess and mitigate all GHG emissions from project proposals.

CEQA generally requires lead agencies to analyze the significant environmental effects of projects prior to their approval, and to mitigate, or address, those effects where feasible. AB 32, however, requires the ARB to adopt rules and regulations to achieve cost-effective and technologically feasible reductions in GHG emissions. AB 32 could not be clearer in placing the responsibility and jurisdiction regarding GHG measures with ARB:

“CHAPTER 4. Role of State Board

38510. The State Air Resources Board is the state agency charged with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases.”

Therefore, as an element of the Scoping Plan, CCEEB would encourage CARB to confirm its “responsibility and jurisdiction” for GHG mitigation for all projects at all facilities covered by the AB 32 programs and Scoping Plan, and also to be cognizant of the far reaching impacts of GHG emissions reduction strategies on economic development projects in California. It’s impact on future land-use decisions made by the myriad of local government entities within the state’s borders dictate that extreme caution be exercised in the integration of CEQA into the framework of AB 32 and that CARB take the lead as part of its responsibility and jurisdiction under AB 32.

This leadership would demonstrate that CARB is serious about eliminating and preventing any duplicative or conflicting regulatory mandates.

**(13) Recognize Early Actions (§ 38562)**

Many industries in the state for a variety of reasons, some economic, some practical and some out of their own desire to reduce greenhouse gas emissions have already begun the process of converting to lower GHG emission equipment and stationary plants. Examples of these actions are plentiful and range from converting from diesel generators to electrical, utilization of solar irrigation pumps and technologies, switching from current high emission fuels to new Biofuels, and replacing older equipment and buildings with more energy efficient units to name a few. These efforts need and deserve to be given credit for the reduction in GHG emissions they deliver prior to any baseline being calculated and established as a reference point for any future reduction mandates.

CCEEB urges CARB to provide expedited approval of offset and voluntary early action protocols long in advance of the start of regulatory standards, so that regulated entities have an incentive to begin the planning and investment to get projects on line given the long lead time for project development. Offset and trading markets in regulated commodities do not develop overnight. Markets require long ramp-ups and systems development and investment to gain the necessary interest and liquidity.

**(14) Demonstrate Decisive Leadership (§ 38501)**

The most effective form of leadership would be to foster and promote policies and practices to reduce GHG emissions that others can follow, for without others following no real gain can be

expected in fighting global warming. The criteria used to create the Scoping Plan must allow for its compatibility and expandability to potential regional and national programs.

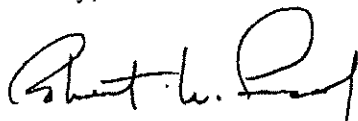
**(15) Provide Opportunities for Local Communities (§ 38565, 38570)**

While the November 30 workshop did mention 'Community empowerment' as a goal it fell far short of the AB 32 requirements to direct public and private investments toward disadvantaged communities and to provide opportunities for small businesses, schools, affordable housing associations and other community institutions to benefit from the mandated statewide effort to reduce GHG emissions. Perhaps one way to address this goal is the development of a cost-effective offset program that includes and targets some localized emissions, mobile source emissions and community-based investment in energy efficiency, renewable energy, transit and regional planning. However, localized, targeted efforts should only be part of a much larger and broader offset program which is necessary for the success of the overall program.

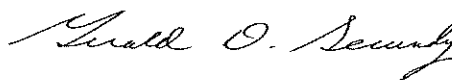
AB 32 establishes multiple criteria that need to be addressed in developing and implementing a successful GHG emission reduction program. Many of the criteria mentioned in this letter have been the subject of staff workshops. However, CCEEB believes that all the criteria have not been subject to full debate and consideration in the numerous workshops held thus far by CARB staff. It is CCEEB's hope that this letter will assist CARB in determining the programs and measures that will be incorporated in its final Scoping Plan.

Thank you for considering our views. We are available to meet with you to discuss these ideas further.

Sincerely,



Robert W. Lucas  
Climate Change Project Manager



Gerald D. Secundy  
President

cc: Dan Dumoyer, Deputy Chief of Staff, Office of the Governor  
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